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Error to Circuit Court of City of Clifton Forge.

Action by H. E. Summerson, trustee, against John Donovan. Judgment for defendant, and plaintiff brings error. Affirmed.

R. G. James and Quarles & Pilson, for plaintiff in error.

C. M. Lunsford and John T. Delancy, for defendant in error.

NOTE.

This case, although no Virginia or West Virginia cases are cited, seems to be the precise converse of the case of *Strother v. Strother*, 106 Va. 120, 56 S. E. 170, where it was held that the administrator of a deceased partner could not sue the firm at law upon a debt arising out of the partnership. The reasoning is the same, and the principle the same as that applied in the principal case, where it is held that the trustee or representative of the firm cannot sue a partner, who has withdrawn from the firm, on a note relating to the firm affairs, without a final settlement had. See, also, *Wright v. Michie*, 6 Gratt. 354; *Aylett v. Walker*, 92 Va. 540, 542, 24 S. E. 226. See, also, as to actions at law between partners, *Newbrau v. Snider*, 1 W. Va. 153; *Logie v. Black*, 24 W. Va. 1, 18; *Newman v. Ruby*, 54 W. Va. 381, 386, 46 S. E. 172, and see annotation in 6 Va. Law Reg. 493. J. F. M.

ARENTS *v.* CASSELMAN & CO.

Jan. 13, 1910.

[66 S. E. 820.]

1. Brokers (§ 88*)—Employment—Question for Jury.—In an action to recover brokers' commissions for the sale of real estate, evidence held sufficient to submit to the jury the question whether there had been a renewal of the original contract of employment.

[Ed. Note.—For other cases, see *Brokers*, Cent. Dig. §§ 128, 129; Dec. Dig. § 88.* 14 Va.-W. Va. Enc. Dig. 178, 253; 1 id. 278.]

2. Appeal and Error (§ 882*)—Review—Invited Error.—Where an instruction given at the instance of defendant is in conflict with correct instructions given at the instance of plaintiffs, the defendant cannot complain of the error, as it was invited by him.

[Ed. Note.—For other cases, see *Appeal and Error*, Cent. Dig. §§ 3591-3610; Dec. Dig. § 882.* 1 Va.-W. Va. Enc. Dig. 608.]

3. Appeal and Error (§ 1001*)—Review—Conclusiveness of Verdict.—A verdict will not be disturbed where the evidence is ample to support it.

[Ed. Note.—For other cases, see *Appeal and Error*, Cent. Dig. §§ 3928-3934; Dec. Dig. § 1001.* 1 Va.-W. Va. Enc. Dig. 609. et seq.]

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

Error to Circuit Court, Henrico County.

Action by Casselman & Co. against George Arents. Judgment for plaintiffs, and defendant brings error. Affirmed.

Henry R. Miller and *R. M. Jeffries*, for plaintiff in error.

Isaac Diggs and *L. O. Wendenburg*, for defendants in error.

JOHNSON *v.* MICHAUX.

Jan. 13, 1910.

[66 S. E. 823.]

Appeal and Error (§ 1032*)—Review—Burden of Showing Error.—On appeal from a decree dismissing a bill in equity, the burden is on complainant to show error to his prejudice.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4047-4051; Dec. Dig. § 1032.* 1 Va.-W. Va. Enc. Dig. 609, et seq.]

Appeal from Circuit Court, Warwick County.

Action by Henry Johnson against Henry Michaux to quiet title. From a decree dismissing the bill, plaintiff appeals. Affirmed.

J. N. Stubbs, for appellant.

Ashby & Read, for appellee.

MYERS *v.* COMMONWEALTH.

Jan. 13, 1910.

[66 S. E. 824.]

1. Taxation (§ 87*)—Property Subject to Taxation—Statutes.—Under Code 1904, §§ 492, 492a, 492b, providing that funds deposited to the credit of a suit to await adjudication and disbursement shall not be listed for taxation, and that evidences of debt held subject to the order of any court shall be taxed to the clerk of the court, etc., and Tax Bill Schedule C, § 8, subsec. 6, (Code 1904, Append. p. 2195), providing that money deposited to the credit of any suit shall not be listed for taxation, money arising from the sale of a debtor's personal property at the suit of creditors, instituting a creditors' suit, is subject to taxation as a court fund, before a report of debts has been made.

[Ed. Note.—For other cases, see Taxation, Dec. Dig. § 87.* 13 Va.-W. Va. Enc. Dig. 100, 103.]

*For other cases see same topic and section NUMBER in Dec. Am. Digs. 1907 to date, & Reporter Indexes.